

## Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 PM-04 NSC-05 SP-02 SS-15 L-03 H-02

PRS-01 CIAE-00 INR-07 NSAE-00 ACDA-07 OMB-01 TRSE-00

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8697

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L MANILA 11940

CINCPAC ALSO FOR POLAD

FROM USDEL 193

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS:

APPLICATION OF PHILIPPINE LAW

1. TWO DAYS OF DISCUSSION WERE DEVOTED IN ATTEMPTING TO BRING THE APPLICATION ARTICLE INTO COMPLIANCE WITH THE SUGGESTED CHANGES CONTAINED IN STATE 192563.

2. MENDOZA AGAIN EXHIBITED A TRACE OF PIQUE AT OUR SUGGESTION THAT "OVER ITS TERRITORY" BE INSERTED IN THE FIRST SENTENCE OF PARA 1. HE CONSIDERED THIS AN ATTEMPT TO DEROGATE THE CONCEPT OF PHILIPPINES SOVEREIGNTY WITHOUT A CCOMODATING OUR STATED CONCERN THAT THIS AGREEMENT SHOULD NOT IMPLY PHIL SOVEREIGNTY OVER THE  
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SOVEREIGNTY OF THE U.S. AS A NATION. FINALLY MENDOZA

STATES THAT HE WOULD GIVE US "WITHIN" IN THE FIRST SENTENCE OF PARA 2 IF WE WOULD TAKE OUT "OVER ITS TERRITORY". WHILE THIS CANNOT PROPERLY BE TERMED A TRADE OFF, IT MAY BE CONSIDERED A POINT FOR THEM AND A POINT FOR US. THIS BARGAIN WAS STRUCK IN THE CONTEXT OF MENDOZA STATING HE HAD NO OBJECTION TO INCLUSION OF THE REFERENCES TO OTHER "RELEVANT AGREEMENTS" IN THE SECOND SENTENCE OF PARA 2. THE LAST SENTENCE OF PARA 2 AGAIN CAUSED PROBLEMS AND ONLY A SLIGHT MODIFICATION WAS EFFECTED. IT WAS AGAIN POINTED OUT THAT THE PHILIPPINES CONSTITUTION INCLUDES REFERENCE TO GENERAL PRINCIPLES OF INTERNATIONAL LAW. MENDOZA STRESSED THAT TO MAKE APPLICATION OF PHIL LAW CONSISTENT WITH IL MAY CAUSE MORE PROBLEMS THAT IT SOLVES. NO ONE KNOWS PRECISELY WHAT SUCH PRINCIPLES ARE AS APPLIED TO SPECIFIC INSTANCES AND IT WOULD PROVIDE BETTER GUIDANCE TO TAKE INTO ACCOUNT PRINCIPLES OF IL IN APPLYING PHIL LAW. IN ANY EVENT, HE WAS ADAMENTLY OPPOSED TO WORDING SUGGESTED IN REFTEL ON THIS POINT. THE NEW AGREED WORKING DRAFT WOULD THEN READ AS FOLLOWS:

"A. THE SOVEREIGNTY OF THE PHILIPPINES EXTENDS TO THE FACILITIES WITHIN PHILIPPINE MILITARY BASES WHICH HAVE BEEN DESIGNATED FOR U.S. USE. MEMBERS OF THE U.S. FORCES, MEMBERS OF THE CIVILIAN COMPONENT AND DEPENDENTS IN THE PHILIPPINES ARE OBLIGATED TO RESPECT THE LAWS OF THE PHILIPPINES AND ABSTAIN FROM ALL ACTIVITY INCONSISTENT WITH THIS AGREEMENT, INCLUDING ALL POLITICAL ACTIVITY IN THE PHILIPPINES. THE UNITED STATES ASSUMES THE OBLIGATION OF ADOPTING NECESSARY MEASURES TO THIS END.

B. PHILIPPINE LAW APPLIES WITHIN THE FACILITIES DESIGNATED FOR U.S. USE. THIS SHALL, HOWEVER, NOT PREJUDICE PARTICULAR EXEMPTIONS IN THE ENFORCEMENT OF PHILIPPINE LAW AS ARE EXPRESSED IN, OR IMPLIED BY, THIS AGREEMENT OR OTHER RELEVANT AGREEMENTS BETWEEN THE TWO PARTIES. IN THE APPLICATION OF PHILIPPINE LAW GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW AND THE NEED TO INSURE EFFECTIVE USE OF THE FACILITIES SHALL BE TAKEN INTO ACCOUNT.

3. IT IS BELIEVED THAT FURTHER ATTEMPTED ALTERNATION OF  
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THIS ARTICLE WOULD LEAD TO AN IMPASSE. RECENT CHANGES IN ACCORDANCE WITH YOUR GUIDANCE ARE CONSIDERED AS NON SUBSTANTIVE AND ARE VIEWED SUSPICIOUSLY BY PHIL MEMBERS OF THE WORKING GROUP AS ATTEMPTS TO DEGRADE THE CLEAR STATEMENTS OF PRINCIPLE AND GAIN MINUTE ADVANTAGES WHICH WILL HAVE NO THEORETICAL OR PRACTICAL APPLICATION.

4. IT SHOULD BE STRESSED THAT IN THE NEGOTIATIONS OF THE WORKING GROUP PAPER (MANILA 10809, USDEL 151), THAT RP REPS VERY RELUCTANTLY AGREED TO WORKING ON IMPLIED EXCEPTIONS, REFERENCE TO INTERNATIONAL LAW AND NEED TO INSURE EFFECTIVE USE OF THE FACILITIES. THEREFORE, BY AGREEING TO INCLUDE SUCH REFERENCE, THEY BELIEVE THEY WENT WAY BEYOND WHAT WAS NECESSARY OR DESIRABLE FROM THEIR VIEWPOINT BUT AGREED IN ORDER TO MEET US PERCEIVED NEEDS AND TO REACH COMPROMISED AGREEMENT THAT APPEARED TO ADEQUATELY SERVE BOTH COUNTRIES NEEDS. CONSEQUENTLY, THEY HAVE TAKEN A DIM VIEW OF FURTHER CHANGES IN AN ARTICLE WHICH THEY FEEL INITIALLY REFLECTED A REALISTIC COMPROMISE ON THEIR PART.

5. ACTION REQUESTED: APPROVAL OF SPECIFIC WORDING OF NEW AD REFERENDUM ARTICLE.  
SULLIVAN

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NNN

## Message Attributes

**Automatic Decaptioning:** X  
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